

2023

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Recommended Citation

S. Nivedha, 'Genocide: An Inhumane Crime Against Mankind and the UN Genocide Convention' (2023) 2 IJHRLR 84-104.

Available at www.humanrightlawreview.in/vol-2-issue-6/.

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GENOCIDE: AN INHUMANE CRIME AGAINST MANKIND AND THE UN GENOCIDE CONVENTION

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ABSTRACT

International Law lays down a set of rules as a means and methods to be followed during warfare between countries to minimize the harm and destruction it can cause. Any violations caused by the said means and methods to be followed are treated as a war crime. War crimes can be any criminal action done that grossly violates human rights, remember any crime against humanity not only during war even at peacetime is also a war crime. International Law treats war crimes as a serious violation of International Humanitarian Law which is a body of law that seeks to protect civilians and non-combatants during warfare. Genocide is an important aspect of war crime that is highly sensitive and brutal. Compared to any other war crimes and crimes against humanity, genocide is considered the most offensive crime. It is a mass killing or destruction of people based on their race, religion, ethnicity, or national identity. After the world witnessed the mass destruction of genocide during World War I and World War II, the United Nations for the first time adopted the Convention on the Prevention and Punishment of the Crime of Genocide in the year 1948. In this article, the genocide from the 1900s till today and its impact will be discussed with the stages of genocide and how far the Genocide Convention is implemented and effective during armed conflicts in an international arena.

KEYWORDS

International law, Genocide, Holocaust, Rwanda Genocide, Armenian

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Genocide, Convention on the Prevention and Punishment of the Crime of Genocide, Human rights.

I. INTRODUCTION

Every citizen apart from having his/her own rights that arise from the laws of the land additionally are entitled to Human rights. It is common for every human being to exist without any discrimination. It includes the right to life and liberty, and freedom from any form of violence, trafficking, slavery, discrimination etc. but when an individual's above-mentioned rights are violated that becomes a serious and sensitive issue. International Humanitarian Law is a customary law that every country needs to follow irrespective of whether it has ratified any related convention. Every country needs to implement laws that protect its citizens' rights to life and liberty and address the grievances of its citizens when such a right is violated. The United Nations has implemented various conventions that ensure the protection of human rights and when such a right is violated it is a serious crime. One such crime is Genocide as it violates the right to life and liberty of innocent civilians which the International Humanitarian law seeks to protect. As stated, international law considers war crimes as a serious violation of human rights. Polish-Jewish lawyer Raphael Lemkin was the first person to coin the term 'genocide' to describe the Nazi's extermination policies against Jews and in response to the previous instances in history of targeted actions aimed at the destruction of particular groups of people. He held campaigns for establishing the Genocide Convention after surviving the horrifying holocaust. Genocide was first recognised as a war crime under international law by the United Nations General Assembly in the year 1946 and implemented a separate codified convention 'Convention on the Prevention of the Crime of Genocide' in 1948. This convention was ratified by 153 countries as of the year 2022. Article II² of the Convention on the

² Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9

Prevention of the Crime of Genocide in 1948 defines genocide as "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such." Actions included in this definition are:

- a) Killing members of a group;
- b) Causing serious bodily or mental harm to members of a group;
- c) Deliberately inflicting on a group condition of life calculated to bring about its physical destruction in whole or in part;
- d) Imposing measures intended to prevent births within a group;
- e) Forcibly transferring children of the group to another group.

In simpler words, genocide is the intentional extermination of a particular ethnic group, race, national, religion, or political group. Genocide can be characterised by mass killings of defenceless civilians which results in physical or mental injuries and bodily harm, further mechanisms are imposed to prevent birth in that group, mass killings of children and women of that particular group, putting conditions of life that result in mass destruction or permanent incompetence at both physical and mental level, finally putting an end to the existence of the particular group. There is a huge difference between war and genocide yet genocide is the worst war crime of all. War particularly aims at conquering and controlling the geographical or political regions whereas genocide mainly aims at devastating or putting an end to a whole community of humans, simply to eliminate a whole group of people. History has seen a lot of extermination and bloodshed in the process of genocide. For instance, the elimination of Jews by Nazis during World War II.

II. ENLIGHTENMENT AS THE CAUSE OF GENOCIDE

The 20th century is said to be the 'century of genocide' as this century witnessed the three most horrific genocides that happened namely – The genocide of the Armenians, The Holocaust, and the genocide in Rwanda.

December 1948 UNGA) art 2.

Based on the three genocides of this century that took place, few scholars have made the correlation between the enlightenment idea and genocide.

The Enlightenment era or the Age of Reason is an intellectual and cultural movement that happened in the eighteenth century carrying the idea of rationalism, progressivism, cosmopolitanism over superstition and science over blind faith. Raphael Lemkin while coining the term genocide in the 1940s held that the act of genocide signifies the return of enlightened people to barbarism. Supporting this view, Foster also quotes that the holocaust is a social deviancy of an enlightened and developed nation.

Thinkers like Horkheimer and Adorno argue that Genocide is the result of the Enlightenment as it proposes the idea that men want to control nature and progress, which in the long run, results in the extermination of a particular group of people in the idea that it leads to a perfect society. That particular group of people are those groups in which the powerful or the ones wanting to exercise power felt worthless, weak, or minority. Armenians, Jews, and Tutsi were considered a worthless group and felt their extermination was necessary. Horkheimer and Adorno felt that, in the minds of the so-called 'rational and enlightened' thinkers, these groups of people needed to be eliminated as they were considered to be a hindrance in achieving a perfect society. This can be inferred from the instances where Armenians were termed "tubercular microbes" and politicians orated that clearing of such microbes is necessary. Furthermore, Hitler addressed the Jews as a "Virus" and their elimination was his service to humanity. Even from the inferences of Genocidaires, that is the Rwandans who are guilty of their involvement in the mass killings of the Tutsi and Hutu tribes of Rwanda, quoted that "purification of society is done through genocide." The killing of Tutsi tribes was considered as clearing up bush and the killing of Tutsi tribe women and children was considered as pulling out the roots of bas weeds. The above instances of genocide support or justify Bauman's theory that only

enlightenment can socially engineer a perfect society in the view of the genocidaires. These are the instances taken by the above-mentioned thinkers who point out that enlightenment is the result of genocide but this may not be a very specific cause as not every enlightened nation will preach genocide to engineer a perfect society.

III. ECONOMIC CRISIS AND GENOCIDE

Thinkers such as Paul R Bartrop, Ervin Staub, and Martin Shaw have a different take as to why genocides happen. For Bartrop and Shaw, genocides happen when the condition of life becomes difficult due to war. For them, whenever war happens there is hardship in people's lives and survival becomes more than necessary. This creates the need to eliminate certain groups of people to protect themselves. Moreover, there are animosities between these groups which further creates the need for each group to protect themselves by becoming a part of something larger. This is what Staub refers to as 'in-groups and out-groups.' According to him, in-groups are the ones that are willing to kill the out-groups, out-groups are basically undesired. Often the out-groups are portrayed as rich people willing to exploit the others. For instance, when the World Economic Crisis happened in 1929, the support for the Nazis increased among the Germans as they were implanted with the seed of the belief that Jews are the only reason for their loss in WW I and for the draining economy of the country. The same happened with the Tutsi tribe of Rwanda as they were blamed for bringing economic crisis in 1980. Whenever an economic crisis happens, people tend to look for someone to blame that is mostly the rich minorities like the Jews, Tutsi tribes etc.

IV. WAR AND GENOCIDE

According to Bartrop, there exists a strong link between war and genocide. Every instance of genocide can be associated with a war or militarisation. During a war, the extermination of enemies who are usually desirable

minority groups within the state is seen as more appealing and legitimate for the purification of a state. When one part of the state starts to blame the other group or the out-group, it starts to terrorise and eliminate the out-group. This happens when a difficult life condition happens such as a loss of war, or a bleak economy and that creates the in-group being united to take it out on the out-group. For instance, the Holocaust happened because the nazis felt Jews were the main reason why Germans lost World War I; in the case of the Rwanda genocide, it happened because there was an accusation that the Tutsi tribes were a part of the invading rebel army which primarily consisted of Tutsi minorities. For this reason, every Tutsi were killed to purify the state. Therefore, war instigates genocide to eliminate that one unwanted, hated, and undesired group.

V. STAGES OF GENOCIDE

Genocide is not something that happens overnight. It is a systematic and organised crime of mass killing of civilians. There are 10 stages through which a genocide happens. Firstly, the stage of Classification. Any country can have a population that can be divided into various groups based on race, culture, ethnicity, language, or dialect. Every country is rich in its diversity. But such diversity in cases of war creates a situation of 'us versus them' mentality among people. Classification is seen in our everyday lives. Even the mere identification of oneself as a homosexual distinguishes them from heterosexuals. But these small classifications play a huge role when a crisis arises. For instance, during the holocaust, people were separated into Aryans and non-Aryans. Even in India, during the struggle for independence, there was a separation between Hindus and Muslims. In Germany, after the rise of Adolf Hitler, the Nazi spirit grew deep-rooted separating them from Jews. In the case of the Darfur genocide, the classification was Arab Sudanese and Africans that is Blacks versus the Sudanese.

The second stage is Symbolization. In this stage, the classification of

people is given or identified with a symbol or a second name. this on its course does result in genocide if accompanied by dehumanisation. A symbol or second name to results in genocide is not associated in a good way or with something positive. For example, the Jews were identified by the symbol of yellow stars of David and the Nazis were identified by the Swastik symbol. Jews were ordered to wear such yellow badges by Caliphates to represent them as outsiders and that yellow badge is also often considered to be a 'badge of shame.' Germany even passed a decree that Jews over the age of six must wear the yellow badge on their clothes very visibly when they are in public so they can be easily identified as a Jew. The Bosnian Genocide also known as the Srebrenica massacre can also be quoted here. From 1992 all the non-Serbians in the municipality of Prijedor of northwest Bosnia were forced to wear white armbands and mark their homes by placing a white flag in front of their house where it is visible by the Republika Srpska (Bosnian Serb political and military enterprises). These white armbands and white flags were served to identify the non-Serbians including women and children to harass, rape, maim, torture and mass murder them. Another instance can be rich farmers of Ukraine who were identified as 'kulak.' Joseph Stalin found a lot of similarities between the Kulaks and capitalists as they owned a lot of land and cattle and could employ labourers and dominate the market. Therefore, they were compared to capitalists and were hated or considered enemies of the nation. Even in the case of the Darfur Genocide, the Africans were referred to as 'Blacks.'

The third stage is discrimination. Once the categorisation happens and is associated with a negative symbol, discrimination happens. Once a symbol depicting to distinguish a particular community based on their race, religion, ethnicity, political ideology etc. affiliating it with negative and degrading terms automatically instigates hatred among the whole section of the population against a particular group of people. This is what Bartrop meant by the out-group. These out-groups can be easily identified based

on the symbol given to them. Wherever they were spotted in public, through the identification of symbols they were harassed, tortured, and murdered. Moreover, the people who were identified with symbols were discriminated against. The in-groups or the dominant groups denied both civil rights as well as personal freedom and sometimes even citizenship to the identified groups. For instance, the 1935 Nuremberg laws deprived the Jews of their German citizenship which made it illegal for them to take up any jobs and marry German non-Jews. Another instance is the Hazara genocide by Abdur Rahman Khan in Afghanistan. Over centuries, the hatred of Hazaras has been deeply rooted in Afghanistan. Though Afghanistan is a multi-ethnic nation, the country was predominated by the Pashtun ethnicity. The members from the Pashtun ethnicity ruled over Hazaras. Hazaras were discriminated against by the Afghan government itself. They were often subject to ethnic cleansing, and slavery, burdened with unnecessary taxes, and looting and were excluded from all socio-economic opportunities by the government.

The fourth stage is dehumanisation. This happens when the stage of discrimination is successful. As the term suggests, in this stage the dominant groups deny the humanity of the in groups and equate them to animals or lower-than-life creatures. They reduce them from the status of humans and degrade them to animals and insects that need to be gotten rid of. They deny them from giving any rights and cease to even recognise them as humans. But why do they do this? The dominant group uses these analogies to justify their killings. Comparing the outcasts with creatures will make the people show less remorse and will find it easy to kill as it will not be murder but rather eradicating pests or purifying society. For instance, during the Rwanda genocide, the Tutsi tribes were referred to as *inyenzi* which translates to 'cockroach' by the Hutus. They were referred to this way because in Rwanda once a cockroach gets inside a house it is hard to get rid of them even if they are killed using insecticides, they keep on coming, therefore it is only easy to kill them as they come by just

stepping on them. Here the cockroach was used as hateful propaganda so that even a poor farmer would understand. If they were compared to mere animals and insects, people would find them easier to kill once the hate gets deeply impacted. This resulted in the killing of nearly 10,000 Tutsi individuals for 100 consecutive days by Hutus as they were considered cockroaches that needed to be driven out. Moreover, Tutsi were also called out using gardening metaphors such as 'weed' and killing of Tutsi was necessary to remove the bush or mere bush clearing. In another instance, the USSR government denied the humanity of Ukraine's rich farmers also known as kulaks who were considered low-life creatures. They were called 'leeches' as they suck the blood of poor peasants and got rich. They were also equated with pests and poison. During the Bangladesh Genocide, the minority Hindus among Bengalis were considered as chicken and monkeys. The Hindus in East Bengal were equated with Jews and hence they were also considered as vermin and should be exterminated.

The fifth stage is organisation. Once the hate is created successfully the dominant group whoever it is can be the government, or power groups come together and train the militias who would carry out the genocide. As stated, genocide is a systematic and planned crime. The training can range from hatred posters to nationwide campaigns and finally causing the destruction as well. For instance, Stalin brought in the 'dekulakization' policy in 1930 which was the beginning to end the complete existence of the kulaks. Further, the Politburo Commission led by V. M. Molotov carried on a nationwide campaign to spread hatred against kulaks. Another instance relating to the Darfur genocide is Janjaweed, an Arab Sudanese militia group that operated in the Darfur region and their main target was the Black Africans who lived in this region. These Janjaweed were local inhabitants armed and trained by the Sudanese government to carry out a series of attacks against the Fur, Masalit and Zaghawa inhabitants of the Darfur region. They executed the mass murders along with harassment and rape of these black African inhabitants of thousands

of villages in the Darfur region between 2003-2005 with the help of the government. Even the Sudanese government bombed the villages to execute the inhabitants of Fur, Masalit and Zaghawa.

The sixth stage is Polarisation. In this stage, the dominant groups impose a line between the dominants and the outcasts. The dominant groups further create hatred by propaganda, campaigns or by implementing laws that exclude the oppressive group. In this stage, the oppressive groups were isolated within their land and were subject to a lot of hate and enmity. They were not even allowed to have communication or any sort of link with the superior groups. This happened so that every individual would exclude the outcasts and those from the superior groups who tried to show sympathy were also killed. Therefore, the superior groups were united more through the hate propaganda ideology that was implanted in their minds on the outcasts. Mainly some laws failed to recognise the outcasts and took away most of their rights. The laws were made as if the outcasts did not even exist. For instance, the Soviet Government implemented various laws that economically gave no opportunity to the Ukraine people which ultimately led to starvation. To ensure the prevailing of such a situation the government kept military blockades, and barbed wires around the Ukrainian villages intentionally so that no food could enter as well no starving individual would flee away to another village or town in search of food. This led to horrific incidents where not only animals but even children were sliced up by their mothers and cooked as a meal. Another instance was the holocaust, where the Jews were not allowed to marry a non-Aryan. Moreover, hatred against Jews was spread through a newspaper called 'Der Stürmer.' For instance, in the Rwandan genocide, the Tutsi and Hutus who did not pledge support to their president Juvénal Habyarimana were identified and labelled as terrorists. The president of Rwanda was shot dead in a plane which acted as a catalyst to the genocide of Tutsi. All over the Rwanda radio stations, the Tutsi were blamed for killing the president.

The seventh stage is Preparation. All the necessary preparations for exterminating the outcast are done in this stage. The outcasts are identified by making them forcefully wear badges or scarves and separated so that they can be attacked. Death lists are drawn up alongside the distribution of weapons among the militias to execute the attack. Preparation is mostly disguised as an act of self-defence as exterminating the outcasts was seen as a way of purifying the state. For instance, in the Rwandan genocide, an army of unemployed young youths of the Hutu tribe who were indoctrinated with a racist ideology of 'Hutu power' were trained and armed to attack the Tutsi individuals. The militias referred to themselves with the phrase Interahamwe which means "those who fight together." Under the soviet government, there were 'specialists' organised to raid each home in the Ukraine region to find any hidden food. Anyone who was found guilty of hiding food was caught and immediately imprisoned. Moreover, the guilty were subject to torture during the interrogations where they were severely beaten, burned even stripped semi-naked in windowless or cold cells. This happens to any person on whom even a benefit of the doubt arises though he may be an innocent.

The eighth stage is persecution. In this stage, the victims or the outcasts are identified based on their ethnicity, religion, culture, race etc and are mistreated by the superior groups. For instance, in cases of religious persecution, the Hindu genocide can be of great prominence. Hindus from historical times till today have experienced serious threats, forced conversions and at worst rapes, torture and genocide. During the Bangladesh Liberation War, the Pakistani army and pro-Pakistani Islamist militias carried out widespread killings and ethnic cleansing of Hindu civilians in Bangladesh. More than around 2,00,000-4,00,000 Bengali women and children were raped and killed in a systematic genocidal rape campaign. This act was supported by the Pakistani leaders and army.

The ninth stage is Extermination. In this stage, the victims are identified

and murdered. This is where genocide in action takes place in a very systematic and deliberate manner. The world has witnessed and is still, a lot of genocides that took place. At this stage, killing becomes easy as it seems as the only viable measure for purifying the state. Moreover, the perpetrators also had no remorse at this stage as they were convinced murdering the outcasts was more like killing a pest or insect. In the Rwandan Genocide, more than one million Tutsi tribes were killed and even the Churches in which they sought refuge were also blown up. Around 5,00,000 Tutsi women were sexually assaulted, brutally raped and murdered. In the Armenian genocide, over 1.2 million Armenians were executed by the nationalist ruling party of the Ottoman Empire. Since the Armenian army was defeated in the First World War, the blame for the defeat was put on the Armenian soldiers who were massacred on the pretext of betraying their empire and helping the enemy forces. The Armenian women and elders were made to forcibly march whenever they were being relocated by the Ottoman forces, in those marches they were given no food or water. Whoever could not continue the march without food and water was executed, nearly thousands of Armenians died during that march also known as the 'death march.' Survivors of these marches were kept in prison under poor to no life conditions which again resulted in deaths. However, some women and girl children were spared from being executed as they were used as sex slaves.

The final stage is Denial. In this stage, the perpetrators deny the existence of any such victims and their massacres or at least try to minimise the number of casualties. They cover up or deny the mass killings they have committed. The eyewitnesses of the genocide are also intimidated and the evidence for the whole systematic and organised crime of genocide was destroyed so that nothing about this will reach the outside world. Even if it did, there were also people to rebut the happening of any such incident. When such a denial is made by the perpetrators and later generations, the whole happening of such an event is in question. Even today there are a

lot of people who deny holocausts that happened. This strategy of denying mass killings made by the perpetrators was done so that they need not take accountability and retain the political and economic advantage for which they did the genocide. The stage of denial denotes the success of the dominant groups and the purpose they sought for is achieved. This denial perpetrates more hate and conflict in the minds of newer generations who deny the mass killings as well. This instantly creates a conflict between the outcasts and the dominant group. Therefore, the denial of genocide is nothing but a promise that such incidents will happen in the future as well. For instance, Palestinian President Mahmoud Abbas argued that only a few thousand Jews were murdered by the Nazis in the Holocaust and the fault was entirely on the Jews because of their defeat in World War I which led to serious downfall of the economy of Germany. Even the Pakistani government denied that any genocide took place during the Bangladesh Liberation War in 1971 and accused the Pakistani reporters as enemy agents of generating false information. Even in the Armenian Genocide, the government of the Republic of Turkey denied the genocide of the Armenians but rather acknowledged the existence of Armenians and established as a fact that they were during the war with the Ottoman Empire in World War I but statistics show a lot of deaths that are unreported because of the genocide. The Holodomor Genocide Denial was a man-made famine that killed more than ten million in Ukraine but the Soviet Government denied the mass killings in Ukraine by denying that no such famine occurred.

VI. THE UNITED NATIONS GENOCIDE CONVENTION

During the holocaust, Raphael Lemkin coined the term 'genocide' to describe the atrocities of nazis a name so that the whole world would acknowledge and understand what was happening. He acted as a major catalyst in driving the United Nations to address the issue of Genocide which violated Human rights. In 1946, International Military Tribunal

tried 22 Nazi German leaders for committing crimes against humanity and peace and war crimes. It was for the first time, genocide was recognised and included as an indictment. After witnessing the mass killings of Jews and more campaigns on recognising humanitarian issues following the Second World War II, in 1947, the United Nations General Assembly declared genocide as an international crime that was seriously condemned as it violates human rights. Any nation that is involved in genocide was held responsible for happening of such events. On 1948 December 9, the United States adopted the Convention on the Prevention and Punishment of the Crime of Genocide which came into force on January 12, 1951. This convention defined the term genocide in Article II which was adopted in the 1998 Rome Statute of the International Criminal Court (ICC). Any violators of this convention were punished by the ICC. Initially, this convention was ratified by more than 20 countries around the world, currently, 153 countries have ratified the convention. This was the first recognised war crime to be codified into a convention. Any convention based on human rights is automatically applicable to the states whether they become a member country of such a treaty or convention. Genocide is not a crime that happens during war, it also happens during the time of peace.

VII. ARTICLES UNDER THE GENOCIDE CONVENTION

The following articles of the Convention on the Prevention and Punishment of the Crime of Genocide states the obligations resting upon the member states to take all the necessary measure to prevent and punish the crime of genocide.

Article III³ of the convention states the following crimes that can be punished

³ Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948 UNGA) art 3.

- a. Genocide;
- b. Conspiracy to commit genocide;
- c. Direct and public incitement to commit genocide;
- d. Attempt to commit genocide;
- e. Complicity in genocide.

Article IV⁴ of the convention states that every member state is obliged to punish any person irrespective of whether that individual is a ruler, constitutionally powerful person, public servant, military, or private individual if he commits or conspires the act of genocide.

Article V⁵ of the convention puts obligations on the member states to get effect on the convention by passing municipal legislation. It must also establish the penalties if found guilty.

India has always been an active member in implementing the genocide convention and ratified it in 1959 but has yet to pass municipal legislation defining genocide.

Article VI⁶ of the convention states that any person charged with the crime of genocide may be tried in a competent tribunal of that member state where the crime was committed or in an International Penal Tribunal with competent jurisdiction.

Article VII⁷ relates to the obligation to grant extradition when there is a real risk of genocide involved.

VIII. IMPACTS OF THE UN GENOCIDE CONVENTION

⁴ Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948 UNGA) art 4.

⁵ Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948 UNGA) art 5.

⁶ Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948 UNGA) art 6.

⁷ Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948 UNGA) art 7.

The United Nations Genocide Convention has had several significant impacts on the international community in preventing and punishing genocide. Here are some key impacts:

1. A legal foundation for classifying and punishing genocide as a crime under international law was established by the Genocide Convention. It established the parameters for what constitutes genocide, defined it clearly, and made it possible for the International Criminal Court (ICC) and other tribunals to bring cases against anyone who is suspected of committing genocide.
2. By stating unequivocally that genocide is prohibited by international law and would be prosecuted, the convention acts as a deterrence. The threat of legal repercussions may deter governments or individuals from carrying out acts of genocidal violence.
3. International criminal tribunals, like the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), were established in large part because of the Genocide Convention. These tribunals were established in order to bring cases against those guilty of war crimes, crimes against humanity, and genocide.
4. The convention holds those responsible for genocide accountable, which advances the cause of justice. It makes it possible to prosecute offenders on a national and international scale.
5. This convention has served as a weapon in the defence of human rights. It gives people and groups a legitimate foundation on which to speak out against suspected acts of genocide and to demand international action and responsibility.
6. The convention places a strong emphasis on the necessity of global cooperation in the fight against and prevention of genocide. In order to stop genocide and respond to it, it pushes states to collaborate and work with international organisations.

7. The Genocide Convention has helped to shape international legal norms concerning the protection of human rights and to prevent the mass atrocities of genocide by local and international players. It has established a precedent for future international legal instruments addressing various aspects of human rights and humanitarian law.

While the Genocide Convention has made significant contributions aiming at the prevention and protection of human rights by severely condemning the acts of genocide, challenges still remain as to its effective implementation. This is because mere ratification of the convention is not enough by the member states, for the convention to be effective the member states must implement it by drafting local legislation.

IX. GENOCIDE LITIGATIONS BEFORE THE INTERNATIONAL COURT OF JUSTICE

- **Bosnia and Herzegovina against Serbia and Montenegro (Srebrenica genocide)⁸**

This case was brought before the ICJ by Bosnia and Herzegovina against Serbia and Montenegro, alleging violations of the Genocide Convention during the Bosnian War (1992-1995). This case was filed in 1993. The ICJ dealt with two allegations, firstly the ethnic cleansing campaigns conducted throughout Bosnia. Secondly the Srebrenica massacres. In its judgment, Although the ICJ found that Serbia had neglected to stop and punish genocide that had taken place throughout the conflict, it absolved Serbia of direct culpability for the atrocity. As the tribunal was satisfied that the Bosnian Serbs committed genocide, it declared that Serbia had breached its duty under the Genocide Convention to prevent and punish crimes of genocide, especially with respect to the 1995 Srebrenica massacre. The International Court of Justice (ICJ) ruled that while certain

⁸ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) Judgment, I.C.J. Reports 2007, p. 43

people operating on behalf of Serbia were involved in providing assistance to Bosnian Serb forces, held that this did not amount to direct state culpability for genocide. However, ICJ held Serbia responsible for failing to take any action in the scope of preventing or punishing the troops that committed mass atrocities through the acts of genocide.

- **The Gambia V Myanmar (Rohingya genocide case)⁹**

Gambia took Myanmar to the International Court of Justice (ICJ) over allegations of genocide against the Rohingya Muslim minority. The case was filed in November 2019, and the judgment is yet to be given. With the backing of the Organisation of Islamic Cooperation (OIC), Gambia declared that Myanmar's military onslaught against the Rohingya community was in violation of the Genocide Convention. The said crimes took place during military operations in Rakhine State, Myanmar, and involved mass murders, sexual assault, and relocation. Because a state is suing another state for genocide, underscoring the seriousness of the accusations, the case at the ICJ is noteworthy. In its appeal for temporary protection for the Rohingya people, while the case was pending, Myanmar was ordered by the International Court of Justice (ICJ) on January 23, 2020, to take necessary measures as required by the convention to prevent any more genocide during the pendency of the case. This case is still being discussed.

- **Ukraine v Russian Federation (2019)¹⁰**

A suit was filed before the International Court of Justice on January 16, 2017, by a representative of Ukraine, seeking to hold the Russian Federation accountable for the following (a) Russia had funded illegal

⁹ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gam. v. Myan.), Judgment on Preliminary Objections (July 22, 2022)

¹⁰ Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2019, p. 558

armed groups that carried out terrorist attacks in Eastern Ukraine in the spring of 2014; (b) that it failed to stop the financing of terrorist acts; and (c) that the State was accountable for terrorist acts carried out by its fund run troops, infringing on its duties under the International Convention for the Suppression of the Financing of Terrorism. In relation to the International Convention on the Elimination of All Forms of Racial Discrimination, Ukraine claimed that Russia had carried out and supported a campaign of racial discrimination against ethnic Ukrainian groups residing in Crimea and Crimean Tatars, holding them accountable for various crimes such as torture, murder, and disappearances. The case is still highly awaited to be decided on merits, but in the meantime, the ICJ addressed the duties under ICSFT and its conflict with respect to Article 22 ICERD. Moreover, on April 19, 2017, ICJ ordered Russia to restrict its campaigning activities in Crimea and Crimean Tatars.

- **Ukraine v Russia Federation (2022)**¹¹

Ukraine filed an application before ICJ on 26 February 2022 against Russia. Its main claim was that the Russian Federation has falsely alleged that acts of genocide have occurred in the Luhansk and Donetsk oblasts of Ukraine, and on that basis recognised the so-called 'Donetsk People's Republic' and 'Luhansk People's Republic', and then declared and implemented a 'special military operation' against Ukraine. Ukraine tried to show that Russia's actions were not covered by the Genocide Convention and demanded full restitution. Ukraine also accused Russia of plotting "acts of genocide in Ukraine" and said that Russian forces were intentionally killing and inflicting serious injury on civilians by implementing that so-called special military operation' Finally, the court concluded that there is a genuine and imminent risk of irreparable harm

¹¹ Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022, p. 211

to Ukraine's rights, and the situation in Ukraine is serious enough to warrant temporary remedy. The court determined that the civilian population affected by the current conflict were extremely vulnerable. The court found that the Russian Federation's 'special military operation' has resulted in countless civilian deaths and injuries. It has also caused extensive physical damage, including the loss of buildings and infrastructure. The attacks continue, making life increasingly difficult for the civilian population. Many people lack access to basic groceries, drinking water, power, needed medicines, and heaters. The two rights claimed by Ukraine are the right not to be subjected to a false genocide claim and the right not to be subjected to Another state's military operation in their territory. These rights were upheld by ICJ and were asserted to them on 16 March 2022, as ICJ ruled that Russia must immediately suspend its military operations in Ukraine's territory that it commenced on 24 February 2022.

X. CONCLUSION

The terrible legacy of genocide has always loomed large over human history. The horrific accounts of mass murder and organized violence serve as a stark reminder of the pressing need for international awareness-raising, intervention, and prevention. It is very evident when we consider the lessons learned from the past that the international community as a whole, bears the responsibility of protecting populations that are deemed vulnerable. In addition to lamenting the lives lost, we also need to make a commitment to promoting a society in which tolerance, justice, and human dignity prevail over bigotry and hatred. We can only hope to create a future free from the horrors of genocide by universally standing together, educating the public, and working nonstop to hold those responsible for the crimes accountable and keeping 'never again' not only as a mere pledge but as an actual reality however long it takes.